Louisiana Law Review

Volume 55 | Number 2
November 1994

Article 613 of the Louisiana Children's Code: Child Abuse Investigations in the Twilight of the Fourth Amendment

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COMMENTS

Article 613 of the Louisiana Children's Code: Child Abuse Investigations in the Twilight of the Fourth Amendment

Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children.

— Justice Felix Frankfurter[1]

I. INTRODUCTION

In the preamble to the Louisiana Children's Code, the legislature has recognized "the family as the most fundamental unit of human society" and, more importantly, that "the role of the state in the family is limited."[2] All state courts and agents utilizing the Children's Code for any purpose must do so with this very significant understanding—"the relationship between parent and child is preeminent in establishing and maintaining the well-being of the child."[3] At the same time, however, the state legitimately claims a compelling interest in its children in the name of *parens patriae*. Under this important judicial doctrine, the state may engage in activities such as mandating primary education[4] and medical treatment in the form of vaccinations,[5] restricting and even prohibiting child labor,[6] and preventing parental neglect.[7]

Obviously the interests of both parents and the state in children may sometimes be in conflict. This was the case of Mrs. Prince, a Jehovah's Witness, who wished her child to help her distribute religious pamphlets. The state of Massachusetts believed this a violation of its child labor laws, and the United States Supreme Court agreed.[8] In another case, the Yoders wished to educate their children at home in conformance with the Amish religious tradition, but in conflict with Wisconsin's mandatory primary education laws. This time the Court agreed with the Yoders. Their interest in raising their children as they saw fit outweighed the state's interest in compulsory education of children.[9]

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1. May v. Anderson, 345 U.S. 528, 536, 73 S. Ct. 840, 844 (1953).
2. La. Ch. Code art. 101.
3. *Id.*
4. *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526 (1972); Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571 (1925).
5. Jacobson v. Massachusetts, 197 U.S. 11, 25 S. Ct. 358 (1905).
6. Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438 (1944).
7. *Id.*
8. *Id.*
9. Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526 (1972).

In the case of child abuse and/or neglect, however, clearly parents have no legitimate interest in perpetrating or permitting such activity. If a state's interest in protecting children from neglect and abuse is compelling, what countervailing interest can parents claim to limit the state's activities undertaken in the name of *parens patriae*? The answer may be the interests parents have in a constitutional right of privacy in the family.[10] The Supreme Court has affirmed this right repeatedly.[11] Thus, when the state initiates an investigation of alleged child abuse and neglect, it may do so only to the extent the constitutional rights of individuals are not infringed.

One of the clearest examples of such a conflict between an individual's privacy interest and a state's *parens patriae* interest is the instance of an entry into a home to search for evidence of abuse or neglect. Perhaps the only way to obtain evidence of such domestic violence occurring behind closed doors is to examine the child. Many times parents[12] who are abusing their children will conceal the wrongdoing by keeping the child at home, indoors, until signs of the abuse have faded or healed. It is imperative for state officials to gain access to an allegedly abused child by a procedure likely to uncover evidence in a timely manner that will identify and protect a child in need. One procedure being used in Louisiana and fourteen other states[13] is a statute that permits a "civil" investigative entry into the home and a search of the home. The typical statute authorizes a juvenile court to issue an order for interviewing and inspecting a child in the home only after a showing by some quantum of evidence that abuse or neglect is occurring.

Louisiana's version of the statute, Article 613 of the Louisiana Children's Code,[14] permits a court, in the course of a state investigation into a report of child abuse or neglect, to grant an entry order into the home where the child may be found upon proof of reasonable suspicion the child has been abused or

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10. *See, e.g.*, Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625 (1923).

11. *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526 (1972); Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438 (1944); Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571 (1925).

12. The term "parents" is meant to include any primary caregiver with whom the child resides.

13. Alabama, Arkansas, California, Colorado, Indiana, Kentucky, Nebraska, New Jersey, North Carolina, North Dakota, South Carolina, Texas, Utah, and Wyoming.

14. La. Ch. Code art. 613 provides:

> A. If in the course of an investigation of a report, admission cannot be obtained to the home, school, or any other place where the child may be found, the investigator shall apply to the juvenile court for an order authorizing an entry for the purposes of interviewing the child and other members of the household, for the visual inspection of the child, and for an inspection of the home to the extent such an inspection is essential to the investigation of specific allegations. The affidavit of the applicant must demonstrate:
>
> (1) That reasonable suspicion exists that the child has been abused or neglected.
>
> (2) That entry has been denied.
>
> B. The court may grant such an order on an ex parte application and may also order a law enforcement officer to accompany the applicant in executing the entry order.

neglected. Whether this article is valid under the Fourth Amendment of the United States Constitution and whether it appropriately strikes the balance between individual privacy, family integrity, and the need to protect potentially endangered children is the subject of this comment.[15]

Part II discusses the purpose, history, and context of Article 613. Part III reviews the Fourth Amendment issues raised by Article 613 and the response of the Supreme Court to these issues in similar contexts. Part IV reviews lower court decisions nationwide and compares the results with those achieved under Article 613. In Part V, this comment concludes Louisiana Children's Code article 613 is constitutional and is an appropriate balance of individual freedom and legitimate state interests in light of current Fourth Amendment interpretation.

II. ARTICLE 613: A PRACTICAL APPROACH TO CURE A HIDDEN ILL

In 1792, when the Fourth Amendment was passed, home entries for child abuse investigations were clearly not contemplated. State intervention in this area is a twentieth century phenomenon beginning with the Child Welfare Titles of the Social Security Act in the 1930's. Today all states have laws criminalizing abuse and neglect of children,[16] as well as statutes authorizing the removal of an endangered child from his or her parents' custody if necessary to protect the child.[17] The federal government predicates granting funds to states through the Aid to Dependent Children Act,[18] the Victims of Child Abuse Act,[19] and the Child Abuse Prevention and Treatment Act[20] on whether states comply with implementing an adequate child welfare scheme, including protective services. Thus, states have had to adopt and implement such protective schemes while at the same time balancing their citizens' Fourth Amendment rights.

In addition, instances covered by the media in shocking detail have horrified the nation, causing a clamor for more aggressive investigations by state agencies into reports of child abuse. In 1987, six-year-old Lisa Steinberg was beaten to death by her adoptive father, a Manhattan attorney. Public outrage was stoked further by revelations of many danger signs apparent prior to the fatal beating, but to which the child protective services of New York had not responded effectively.[21] Closer to home, Joshua Gnagie, a Baton Rouge toddler, was beaten

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15. The author recognizes Article 1, § 5 of the Louisiana Constitution guarantees an individual's right to privacy. This comment does not address the validity of La. Ch. Code art. 613 under this provision of the Louisiana Constitution.

16. *See, e.g.*, La. R.S. 14:74 (1986).

17. *See, e.g.*, La. Ch. Code arts. 619, 621.

18. Aid to Dependent Children Act, Pub. L. No. 340, 58 Stat. 277 (1944).

19. Victims of Child Abuse Act of 1990, Pub. L. No. 101-647, 104 Stat. 4792 (1990), *amended by* Pub. L. No. 102-586, 106 Stat. 5029 (1992) (codified as amended in Titles 18 and 42 of U.S.C.).

20. Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101-5116g (1988 & Supp. V 1993).

21. *See, e.g.*, Steven Erlanger, *Officials Said to Ignore Pleas For Abused Girl*, N.Y. Times, Nov. 4, 1987, at A1; Todd Purdum, *Manhattan Couple Are Charged In Beating of 6-Year-Old*

to death by his mother's lover after reports of alleged abuse to the state child protection agency.[22] Because of these and other terrible stories of child fatalities owing to ineffectual state agencies, states have responded by enacting child protection schemes designed to respond to reports of abuse and neglect in a quicker and more efficient manner.

Effective January 1, 1992, the Louisiana Children's Code codified all law relating to minors in a systematic and organized fashion to allow juvenile courts to better serve the needs of children, families, and justice.[23] Included in the Children's Code is Title VI entitled "Child in Need of Care." This title is a comprehensive scheme for identifying and protecting children "whose physical or mental health and welfare is substantially at risk of harm by physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others."[24] This goal is accomplished by providing for the reporting and investigation of suspected cases of child abuse as well as judicial remedies, including removal of the child from the home if necessary. The Children's Code lays out a comprehensive scheme, using defined terms of "abuse"[25] and "child in need of care,"[26] of mandatory and voluntary reporting of suspected

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Daughter, N.Y. Times, Nov. 3, 1987, at B1; Mark Uhlig, *A System That Couldn't Save a Child From Lethal Abuse*, N.Y. Times, Nov. 6, 1987, at A1.

22. Keith Woods, *Red Tape Snarls Young Lives*, New Orleans Times Picayune, Feb. 27, 1989, at A1.

23. 1991 La. Acts No. 235, §§ 1-16.

24. La. Ch. Code art. 601.

25. La. Ch. Code art. 603 provides in pertinent part:

> As used in this Title:
>
> (1) "Abuse" means any one of the following acts which seriously endanger the physical, mental, or emotional health of the child:
>
> (a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.
>
> (b) The exploitation or overwork of a child by a parent or any other person.
>
> (c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

26. La. Ch. Code art. 606 provides:

> A. Allegations that a child is in need of care must assert one or more of the following grounds:
>
> (1) The child is the victim of abuse.
>
> (2) The child is a victim of neglect.
>
> (3) The child is without necessary food, clothing, shelter, medical care, or supervision because of the disappearance or prolonged absence of his parent or when, for any other reason, the child is placed at substantial risk of imminent harm because of the continuing absence of the parent.
>
> (4) As a result of a criminal prosecution, the parent has been convicted of a crime against the child who is the subject of this proceeding, or against another child of the parent, and the parent is now unable to retain custody or control or the child's welfare is otherwise endangered if left within the parent's custody or control.

abuse,[27] of mandatory minimum investigative procedures the state must follow for every report of abuse before closing the case,[28] and of measures for protecting children judicially determined to be "in need of care."[29]

Article 613 is part of the state-mandated procedures for handling of a report of child abuse and neglect. The state child protection agency must, in the course of a preliminary investigation, ascertain the truth of the report by interviewing the child and parent(s) or other caretaker. Article 613 facilitates the preliminary investigation by allowing the child protection worker access to the child.[30]

The article is similar to the version prior to the adoption of the Children's Code in 1991,[31] but with several significant clarifications. Where the prior article was broad, permitting an entry "for investigation" upon an affidavit showing "good cause," Article 613 is more specific in stipulating for both the scope of the search allowed and the quantum of evidence required for authorization. Paragraph B of Article 613 fills a gap in the prior law by permitting a law enforcement officer to accompany the child protection worker. The comment to Article 613 explains the new standards are intended to comply with the Supreme Court's most recent interpretation of the Fourth Amendment in the field of home entries in child abuse

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B. A child whose parent is unable to provide basic support, supervision, treatment, or services due to inadequate financial resources shall not, for that reason alone, be determined to be a child in need of care.

27. La. Ch. Code art. 609 provides:

A. With respect to mandatory reporters:

(1) Notwithstanding any claim of privileged communication, any mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death shall report in accordance with Article 610.

(2) Violation of the duties imposed upon a mandatory reporter subjects the offender to criminal prosecution authorized by R.S. 14:403(A)(1).

B. With respect to permitted reporters, any other person having cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect, including a judge of any court of this state, may report in accordance with Article 610.

C. The filing of a report, known to be false, may subject the offender to criminal prosecution authorized by R.S. 14:403(A)(3).

28. *See* La. Ch. Code arts. 612-615.

29. See chapter 6 of the Louisiana Children's Code. Chapter 6 is composed of Articles 617-627.

30. See *supra* note 14 for the text of La. Ch. Code art. 613.

31. Prior to its amendment by 1992 La. Acts No. 705, La. R.S. 14:403(G)(2)(b)(ii) (1986 & Supp. 1992) read:

If admission to the home or any other place where the child may be cannot be obtained, the investigator shall apply to the court with juvenile jurisdiction for an order authorizing an entry for investigation. Upon affidavit and with good cause shown, the court shall order the parent or other caretaker or the person or persons in charge of any place where the child may be to permit the entry for an interview or other investigation of the report. Admission of the investigator on school premises or access to the child in school shall not be denied by school personnel.

investigations.[32] The Supreme Court, however, has never directly addressed the situation that Article 613 purports to cover—an entry into the home to investigate allegations of abuse authorized by a court order issued on less than probable cause and absent any exigent circumstances.

The procedure outlined in Article 613 is a practical solution in the face of the realities of investigating child abuse cases. Although probable cause is a "fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules,"[33] obtaining evidence that rises to a minimal level accepted as probable cause is difficult in this particular context. If the abuse occurs at home, it happens behind closed doors with no witnesses. Children will often be threatened with retribution should they complain to others. Bruises may be covered by clothing or easily explained away as resulting from a child's rough play. Thus abuse and neglect too often go undetected until they become "serious" or fatal. A procedure that allows an effective investigation when abuse is indicated by evidence that does not yet rise to the level of probable cause is very desirable. Allowing a law enforcement officer to accompany a child protection worker in executing the entry order also is rational, especially where entry has been previously denied and may have to be made by force into a hostile environment. Finally, allowing entry into the home, more often than not the location of the abuse, is a reasonable measure to ensure an effective investigation.

On the other hand, such investigations are extraordinarily intrusive. They invade the most respected bastions of privacy—the home and the family. "Because child abuse is so emotional an issue, the temptation 'to conduct searches that sacrifice the liberty of each citizen to assuage the perceived evil' is a strong one."[34] This temptation must be met with stern resistance by the courts if individual liberty is not to become a thing of the past. Constitutional protection easily extends to investigations of child abuse. Although not contemplated by the drafters in 1792, the evils which the Fourth Amendment guards against include invasion by electronic eavesdropping[35] and by child abuse investigators. Necessity owing to difficulty of investigation cannot alone justify dilution of the fundamental constitutional rights.

III. INVADING THE HOME IN THE NAME OF THE CHILD: CIRCUMVENTING THE FOURTH AMENDMENT

The language of Article 613 raises several Fourth Amendment issues which must be addressed in light of current jurisprudence. In many ways the state action

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32. La. Ch. Code art. 613 cmt. (a).

33. Illinois v. Gates, 462 U.S. 213, 232, 103 S. Ct. 2317, 2329 (1983).

34. Michael R. Beeman, *Investigating Child Abuse: The Fourth Amendment and Investigatory Home Visits*, 89 Colum. L. Rev. 1034, 1067 (1989) (quoting New Jersey v. T.L.O., 469 U.S. 325, 361, 105 S. Ct. 733, 753 (1985) (Brennan, J., dissenting)).

35. Katz v. United States, 389 U.S. 347, 88 S. Ct. 507 (1967).

sanctioned by this article goes beyond the scope of any Supreme Court decision that found state action constitutionally permissible. As discussed below, the Court has addressed similar instances, but none directly on point with the action in this article—a home investigatory entry authorized by a warrant justified only by reasonable suspicion. This comment will focus on the main areas of federal constitutional concern with Article 613: (1) the contemplated search involves the home, traditionally accorded the most respect under a Fourth Amendment analysis; (2) the search is properly categorized as civil rather than criminal in nature; and (3) the reasonable suspicion standard employed by the article builds upon the emergency exception to the warrant requirement in a manner not previously discussed by the Supreme Court.

A. A Man's Home is His Castle—Or is It?

First, to even begin a Fourth Amendment analysis, the particular conduct must amount to a judicially recognized search. The Supreme Court has refused to raise certain sensory perceptions of evidence to the level of a "search"—reasoning police or government agents were in a place where they legally had a right to be when the perception occurred and the evidence was in plain view, not intended to be kept private or out of the public eye.[36] This is rarely an issue in child abuse cases since normally abuse does not occur in plain view.

Second, the search must be in or of a "constitutionally protected area,"[37] one of the categories provided for in the Fourth Amendment—persons, houses, papers, or effects. In *Katz v. United States*,[38] the Court explained the Amendment "protects people, not places,"[39] and the constitutionally protected area concept cannot "serve as a talismanic solution to every Fourth Amendment problem."[40] Justice Harlan did note in his concurring opinion, even under this approach, "[A] man's home is, for most purposes, a place where he expects privacy."[41] Even after *Katz*, the Court has always applied the Fourth Amendment to a search inside a home, accepting a justified higher expectation of privacy in the home.[42] Thus, a parent's home is clearly within the purview of the word "houses" for purposes of a Fourth Amendment analysis of home entries in child abuse investigation.

B. Is This a Civil or a Criminal Search?

Whether a home entry in a child abuse investigation is classified as a full-blown criminal search or a mere "civil" search is significant. The classification

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36. *See, e.g.*, Arizona v. Hicks, 480 U.S. 321, 107 S. Ct. 1149 (1987).
37. Silverman v. United States, 365 U.S. 505, 510, 81 S. Ct. 679, 682 (1961).
38. 389 U.S. 347, 88 S. Ct. 507 (1967).
39. *Id.* at 351, 88 S. Ct. at 511.
40. *Id.* at 351 n.9, 88 S. Ct. at 511 n.9.
41. *Id.* at 361, 88 S. Ct. at 516 (Harlan, J., concurring).
42. *See, e.g.*, Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371 (1980).

determines whether a court must apply the Fourth Amendment protections to the fullest extent possible or may analyze intrusions under a more relaxed standard. A search of a home in a criminal investigation not authorized by a warrant supported by probable cause is per se unreasonable and thus prohibited by the Fourth Amendment, "subject only to a few specifically established and well-delineated exceptions."[43] If a search is deemed "civil" or "administrative," however, the inquiry becomes a balancing approach for overall reasonableness, a less stringent and rigid analysis affording less protection to individuals. In these instances certain searches may be exempt from either the warrant requirement or the probable cause requirement to issue a warrant, allowing a lesser quantum of proof to justify the entry order.[44]

At one time, the Fourth Amendment had been held inapplicable outside of the context of criminal investigations. Civil, or administrative, searches were thought to "touch at most upon the periphery of the important interests safeguarded"[45] by the Fourth Amendment. Later, perhaps as the need for enforcement of more complicated regulatory schemes became greater, the Supreme Court held in *Camara v. Municipal Court*[46] that, even in an administrative investigatory context, the searches at issue (home searches for compliance with fire regulations) were "significant intrusions,"[47] needing the safeguards a warrant provides. However, the *Camara* warrant was issued on a lower quantum of evidence than probable cause.

Although courts and commentators have devoted little analysis to the distinction between criminal and administrative searches, the accepted means of distinguishing between the two is through the purpose of the search. If a search is conducted as a part of a criminal investigation, it is classified as criminal. Otherwise the search is civil. This is the simple approach adopted by the Supreme

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43. Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967).

44. By its terms and by consistent judicial interpretation, the Fourth Amendment only protects against those searches and seizures which are found unreasonable. Traditionally, the first clause of the Fourth Amendment, which prohibits unreasonable searches and seizures, was read in conjunction with the second clause, referred to as the "warrant" clause, to deem a search that takes place without a warrant and not supported by probable cause *per se* unreasonable, "subject only to a few specifically established and well-delineated exceptions." *Id.* Gradually the Supreme Court has left this hard and fast rule behind, and now the relationship between the two clauses is far less clear. Both searches that take place without a warrant and those that take place with a warrant, but supported by a quantum of evidence less than probable cause, may now be upheld as reasonable. Exceptions that have evolved to the warrant requirement in addition to the administrative and regulatory searches include automobile searches, consensual searches, searches under the emergency and exigent circumstances doctrines, searches incident to lawful arrest, limited searches and seizures under the stop and frisk doctrine, searches and seizures in hot pursuit of a fleeing felon, and protective sweep searches.

45. Frank v. Maryland, 359 U.S. 360, 367, 79 S. Ct. 804, 809 (1959).

46. 387 U.S. 523, 533, 87 S. Ct. 1727, 1733 (1967) (holding a warrant was not required because no showing was made the "fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement").

47. *Id.* at 534, 87 S. Ct. at 1733.

Court,[48] especially when warning that an administrative warrant should not issue for the sole purpose of furthering a criminal investigation.[49] Furthermore, the Court has consistently held a search conducted for both civil and criminal purposes does not require classification of the search as criminal.[50]

Professor Wayne LaFave analyzes these searches by their purposes, just as do the courts.[51] The "purpose" classification becomes important, not just when distinguishing a civil from a criminal search, but also when distinguishing within the civil administrative types. Each administrative type raises different issues to whether a warrant will be required at all or whether a lesser quantum of proof to justify the search will be required. Professor LaFave presents the following administrative and regulatory categories: (1) routine public health and safety inspections of homes and of businesses, (2) inspections of highly regulated businesses pursuant to statutory or regulatory authority, and (3) special searches by reason of the status of the person to be searched in relation to the government and/or society.[52]

In *Camara v. Municipal Court*,[53] the Supreme Court held the Fourth Amendment applicable to fire, health, and housing code inspections, finding the inspections to be "significant intrusions"[54] requiring the safeguards a warrant provides, but also finding such searches to be only limited invasions of privacy.[55] A housing inspection is a limited intrusion in the sense of being "neither personal in nature nor aimed at the discovery of evidence of crime."[56] The purpose of the search is to ascertain compliance with fire, health, and housing codes to protect the general public, as opposed to the punishment of lawbreakers. These routine public safety inspections have been upheld in the cases of businesses as well as homes.[57]

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48. *See, e.g.*, Michigan v. Clifford, 464 U.S. 287, 294, 104 S. Ct. 641, 647 (1984) ("[T]he object of the search determines the type of warrant required.").

49. *See, e.g.*, New York v. Burger, 482 U.S. 691, 725, 107 S. Ct. 2636, 2656 (1987) (Brennan, J., dissenting); Michigan v. Tyler, 436 U.S. 499, 508, 98 S. Ct. 1942, 1949 (1978); Abel v. United States, 362 U.S. 217, 226, 80 S. Ct. 683, 690 (1960). In *Abel*, the Court said: "The deliberate use by the Government of an administrative warrant for the purpose of gathering evidence in a criminal case must meet stern resistance by the courts." *Id.*

50. *See, e.g.*, New York v. Burger, 482 U.S. 691, 107 S. Ct. 2636 (1987).

51. *See generally* 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment §§ 10.1-10.5(k), at 595-788 (2d ed. 1987 & Supp. 1994); 4 LaFave, *supra*, §§ 10.6-10.11(e), at 1-185.

52. 3 LaFave, *supra* note 51, §§ 10.1-10.5(k), at 595-788; 4 LaFave, *supra* note 51, §§ 10.6-10.11(e), at 1-185. LaFave also includes inspections at fire scenes and checkpoint searches in his administrative categories. The fire scene searches can, for purposes of this comment, more properly be discussed as part of the emergency doctrine. *See, e.g.*, Michigan v. Clifford, 464 U.S. 287, 104 S. Ct. 641 (1984). The checkpoint search exception is narrowly drawn and not fairly analogous to searches in the context of child abuse investigations.

53. 387 U.S. 523, 87 S. Ct. 1727 (1967).

54. *Id.* at 534, 87 S. Ct. at 1733.

55. *Id.* at 537, 87 S. Ct. at 1735.

56. *Id.*

57. *See, e.g.*, See v. City of Seattle, 387 U.S. 541, 87 S. Ct. 1737 (1967).

The characteristic problem solved by these searches is that on-site inspections are the only way to enforce public safety regulations. Allowing this necessity to dictate the permissibility of certain searches could swallow the prohibition established in the Fourth Amendment. Such safety inspections, however, are systematically and uniformly administered which limits the possibility of discriminatory targeting. Also, the warrant requirement stems the discretion of the searching agent.

To include home entries in the course of child abuse investigations in the category of routine health and safety checks would be a stretch. This form of administrative searches is for the protection of the general population, not for a specific individual. While these searches are limited in scope (i.e., a cursory inspection of a wiring box), child abuse investigations are very intrusive—involving questioning of family members, examining the child, and possibly searching the home for instruments of abuse. Finally, with routine public safety inspections, no individualized suspicion exists that the citizen whose home is searched is in actual violation of any regulation. In a child abuse investigation, the fact of the open investigation means a particularized report or accusation has been made. Thus, the reasons justifying lesser Fourth Amendment protection of routine public health or safety inspections seem inapposite to home entries in the context of child abuse investigations.

A category of administrative searches analogous to public safety inspections is that of "closely regulated" businesses. These searches are conducted pursuant to statutory authority, usually a comprehensive regulatory scheme designed to make certain industries either safer or less prone to participation by organized criminal elements. Such searches have been upheld in instances of inspecting business premises of a liquor licensee,[58] of firearms and ammunitions dealers,[59] of automobile junkyards,[60] of underground and surface mines,[61] and of home-run day care businesses.[62]

According to Professor LaFave, two rationales have been advanced to justify these warrantless intrusions. First is the implied consent theory—by acquiring a license and commencing business in an industry subject to pervasive regulation, the owner is put on notice of the regulations necessitating periodic inspections and "consents" to the searches inherent in the regulatory scheme. The second rationale is the reduced expectation of privacy theory—since the owner of a closely regulated business knows in advance regulatory inspections will occur, he has a reduced expectation of privacy in those premises under a *Katz* analysis.[63]

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58. Colonnade Catering Corp. v. United States, 397 U.S. 72, 90 S. Ct. 774 (1970).

59. United States v. Biswell, 406 U.S. 311, 92 S. Ct. 1593 (1972).

60. New York v. Burger, 482 U.S. 691, 107 S. Ct. 2636 (1987).

61. Donovan v. Dewey, 452 U.S. 594, 101 S. Ct. 2534 (1981).

62. Rush v. Obledo, 756 F.2d 713, 723 (9th Cir. 1985).

63. 3 LaFave, *supra* note 51, § 10.2, at 629-69. Professor LaFave criticizes these rationales, saying first of all, the "consent" is fictional and not an appropriate substitute for an analysis of the particular regulatory scheme as was done in *Camara* and in *Dewey*. As for the reduced expectation

These rationales do not apply in the case of the child abuse investigations. First of all, it is unpersuasive to argue child rearing is a highly regulated industry.[64] An individual is not put on notice that his parenting is subject to regulatory inspections and thus cannot be "consenting" to heightened governmental interference in his life simply by having a child. Also, Supreme Court jurisprudence has consistently held family life is entitled to a high degree of privacy, and the state may interfere only for compelling reasons.[65] Thus, having a child should not diminish an expectation of privacy in one's home. For a child abuse investigation to commence, a degree of individualized suspicion must exist that is not required for execution of a regulatory search of a business. Entries in cases of child abuse investigations are thus distinguishable from searches of businesses in highly regulated industries.

Some searches are classified as administrative when executed by a government agent who stands in a special relationship to the citizen to be searched. In the realm of public school education, a teacher has authority to search a student's purse upon reasonable suspicion the student has illegal drugs because of the need to maintain security and order in the schools.[66] Similarly, the relationship between the government employer and employee presents a special status case. In the case of *O'Connor v. Ortega*,[67] a search of an employee's office in a state hospital to investigate "work-related employee misfeasance" was necessary to maintain the "efficient and proper operation of the [hospital]."[68] In *Wyman v. James*,[69] the Court held a routine, compulsory home

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of privacy theory, presumably the state cannot grant a privilege (such as the ability to do business by obtaining a license) on the condition the citizen give up a right guaranteed by the Constitution, such as the Fourth Amendment's protections. *See, e.g.*, Spevack v. Klein, 385 U.S. 511, 87 S. Ct. 625 (1967); Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790 (1963); Slochower v. Board of Higher Educ., 350 U.S. 551, 76 S. Ct. 637 (1956).

64. Perhaps one might argue parenting and family life is now a heavily regulated activity. In light of the child welfare amendments to the Social Security Act in the 1930's, perhaps there is some authority for such an opinion, at least with respect to those who are recipients of public welfare. *See, e.g.*, Wyman v. James, 400 U.S. 309, 91 S. Ct. 381 (1971). But see the cases cited *infra* note 65, establishing a constitutional right to family privacy free from government control.

65. *See, e.g.*, Moore v. City of East Cleveland, 431 U.S. 494, 97 S. Ct. 1932 (1977); Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571 (1925); Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625 (1923).

66. New Jersey v. T.L.O., 469 U.S. 325, 105 S. Ct. 733 (1985).

67. 480 U.S. 709, 107 S. Ct. 1492 (1987).

68. *Id.* at 723, 107 S. Ct. at 1500.

69. 400 U.S. 309, 91 S. Ct. 381 (1971). This is an unusual case in the area of administrative or regulatory searches because the Court held a warrantless home visit by a caseworker made as a condition to a welfare recipient's continued receipt of benefits (money received under the Aid to Families with Dependent Children program) was not a search contemplated by the Fourth Amendment. This conclusion has been severely criticized. Professor LaFave has written:

> Although the facts of *Wyman* give rise to some Fourth Amendment issues of considerable complexity, it is fair to say that the Court never dealt directly and forthrightly with them. In large measure, this is because the Court made . . . erroneous determinations which diverted it away from those issues. First, . . . the Court is

visit by an Aid to Families with Dependent Children caseworker is not unconstitutional and may be required as a condition of continued receipt of benefits.

Although the Court in *Wyman* found the home visit not to be a search for constitutional purposes, it employed telling alternate reasoning, perhaps sensing how unsatisfactory this conclusion actually was. The court reasoned that, even assuming the home visit was a search, it was not an unreasonable search. This determination was based on several factors similar to those utilized in other cases analyzing administrative searches. Normally the inquiries run along the lines of the balancing test first articulated in *Camara:* to determine whether it is appropriate to issue a warrant based upon a lesser quantum of evidence, a court must "balanc[e] the need to search against the invasion which the search entails."[70] The Court in *Camara* found the housing inspections were lesser invasions of privacy because they were "neither personal in nature nor aimed at the discovery of evidence of crime."[71] In addition, the invasions were minimal because the resident had advance notice of the impending visit, the search was not made by armed law enforcement officers, the search was made only during daylight hours, and the searches did not import "damage to reputation resulting from an overt manifestation of official suspicion of crime."[72] As for the need to search, the Court said "the public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results."[73]

Applying the *Wyman* facts to the *Camara* balancing test, the Court probably would have reached the conclusion that a lesser standard than probable cause would have been appropriate. The invasion was minimal because of the non-personal and non-criminal nature of the inspection and because of the relatively non-intrusive and non-alarming manner in which the inspections were conducted. The need for the search was clearly established as insuring the child was provided for in the manner intended. The Court particularly noted that all pertinent information could be collected only through the mechanism of a home visit, fulfilling the "acceptable results" requirement.

All of these "special needs" cases[74] place the state in a supervisory role in implementing a socially beneficial program—education, health care, and

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unquestionably incorrect in its assertion that a home visit is not a search.
3 LaFave, *supra* note 51, § 10.3(a), at 671.

70. Camara v. Municipal Court, 387 U.S. 523, 537, 87 S. Ct. 1727, 1735 (1967).

71. *Id.*

72. Comment, *Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment*, 28 U. Chi. L. Rev. 664, 701 (1961). This article is attributed to no particular author or authors. Instead, it was written by various unnamed members of the University of Chicago Law Review Editorial Board.

73. *Camara*, 387 U.S. at 537, 87 S. Ct. at 1735.

74. New Jersey v. T.L.O., 469 U.S. 325, 351, 105 S. Ct. 733, 748 (1985) (Blackmun, J., concurring).

welfare—in each of these cases the Court found the warrant requirement inapplicable. The rationale has been explained by one commentator as follows:

> When the government acts in a supervisory capacity, it does so within the bounds of a particular relationship. It is not acting in its capacity as sovereign, but in some other role. Its *primary* function is not the regulation of undesirable conduct. Its regulation of conduct is a *secondary* function necessary only because such conduct hampers the state in accomplishing the relationship's primary function.[75]

Several cases indicate the government might occupy a special status in relation to children—*parens patriae*[76]—that may justify home searches in child abuse investigations upon less than traditional Fourth Amendment standards.[77] However, such an assertion of power claimed as the right of a sovereign power could swallow almost every constitutional protection allowed to individuals. Even the special needs cases drew limits, finding necessity in the implementation of certain state programs or institutions where the "normal mechanisms of law enforcement are *inappropriate* or *inadequate* to accomplish the state's objectives."[78] In investigations of child abuse, the parents who are targeted are not those with children in a special relationship to the state, but those who have been reported as perpetrating abuse or neglect.[79] No special objective of the state is being furthered other than protection of certain citizens from criminal conduct—elements present in every criminal investigation. Again the home entry in the course of an investigation of abuse is distinct from this category of administrative searches.

A criticism of the distinction based on purpose is that, in light of the jurisprudence, this distinction has actually become rather meaningless.

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75. Beeman, *supra* note 34, at 1062.

76. Black's Law Dictionary 1114 (6th ed. 1990) defines this principle in pertinent part thusly:
> [L]iterally "parent of the country," refers traditionally to the role of state as sovereign and guardian of persons under legal disability, such as juveniles or the insane. . . . It is the principle that the state must care for those who cannot take care of themselves, such as minors who lack proper care and custody from their parents.

77. *See generally* Beeman, *supra* note 34.

78. Beeman, *supra* note 34, at 1042.

79. An argument could be made that once the report of abuse or neglect has been made, then the child is placed automatically in a special status relative to the state child protection agency. However, the other "special needs" cases involve the beneficiary of the special relationship being the object of the search. It would be unprecedented to allow a diminution of Fourth Amendment safeguards of a person who stands in a special relationship to *someone else* who is in a special relationship to the government. See also DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 109 S. Ct. 998 (1989), in which the Court held the state, in a civil action brought by a mother and child against it, had no duty to protect a child from his father after having received reports of possible abuse. There was no special relationship between the child and the state merely because the state was investigating reports of abuse and the child was not in the state's custody. This argument could be extended to say the state has no power over the child because there is no special relationship to the child merely by virtue of the open investigation.

According to the reasoning in *New York v. Burger*,[80] almost any search not made directly in an open criminal investigation will be deemed administrative and will not require full Fourth Amendment protections. The Court upheld a warrantless search of an automobile junkyard conducted pursuant to a state statute as an administrative inspection of a "pervasively regulated industr[y]."[81] While recognizing the ultimate purpose of the state regulation was to deter criminal behavior (motor vehicle theft), the Court rejected the view of the court of appeals that the administrative goal of the statute was pretextual, actually authorizing "searches undertaken solely to uncover evidence of criminality."[82] The Court stated that administrative statutes and penal laws might have as their object the curing of the same social ill, but then continued:

> [T]hey have different subsidiary purposes and prescribe different methods of addressing the problem. An administrative statute establishes how a particular business in a "closely regulated" industry should be operated, setting forth rules to guide an operator's conduct of the business and allowing government officials to ensure that those rules are followed. Such a regulatory approach contrasts with that of the penal laws, a major emphasis of which is the punishment of individuals for specific acts of behavior.[83]

One cannot fault the defendant, Mr. Burger, for not comprehending the distinction even after such a tutorial from Justice Blackmun, the author of the opinion. This case illustrates a willingness on the part of the Supreme Court to uphold administrative statutes designed for circumventing the Fourth Amendment's warrant and probable cause requirements. Furthermore, judging from the analysis in *Burger*, any business may be deemed "closely regulated" if the state has passed a regulatory scheme relating to the area. The Court is very open to allowing searches to be undertaken in the absence of a warrant and/or probable cause if the search can be deemed administrative.

Child abuse investigations have definite criminal investigatory overtones. For example, the purpose of the search is to determine whether a criminal activity is occurring. Child abuse may include many crimes: assault, rape, molestation, exploitation, incest, and neglect. In some cases the police will accompany the social service worker during the home search. Even when they do not, reports found to be justified require notification of the district attorney.[84] As in a criminal search, these home visits can be broad in scope, including "an

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80. 482 U.S. 691, 107 S. Ct. 2636 (1987).

81. *Id.* at 693, 107 S. Ct. at 2639.

82. *Id.* at 697-98, 107 S. Ct. at 2641 (quoting the New York Court of Appeals in New York v. Burger, 493 N.E.2d 926, 929 (N.Y. 1986)).

83. *Id.* at 712-13, 107 S. Ct. at 2649.

84. La. Ch. Code art. 615.

inspection of the home to the extent such an inspection is essential to the investigation of specific allegations."[85]

On the other hand, the home searches that take place in a child abuse context are more properly seen as civil, rather than criminal. First, the entry order issues from a juvenile civil court. Second, the primary purpose behind the home entry is to ensure child welfare, while searching for evidence of criminal behavior is a secondary function. Last, few valid reports of child abuse are prosecuted as crimes.[86] Thus,

> so long as a search serves a valid administrative function it may be conducted by police officers for the purpose of uncovering evidence of criminal wrongdoing and still be labeled administrative. This in turn yields the conclusion that child abuse investigations are administrative, since they further a valid administrative objective.[87]

C. *Emergency and Exigent Circumstances Doctrines: Is Abuse of a Child Always an Emergency?*

Exceptions have evolved to the traditional requirement of a warrant authorizing a search. Of particular interest in the area of home searches in child abuse investigations are the emergency and exigent circumstances doctrines.[88]

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85. La. Ch. Code art. 613. For example, if it is alleged the child has been beaten with a belt with a large buckle, the home entry could entail a search of the parents closets and drawers for the instrument of abuse.

86. Beeman, *supra* note 34, at 1050 n.127. Beeman cites David Finkelhor, *Removing the Child—Prosecuting the Offender in Cases of Sexual Abuse*, 7 Child Abuse & Neglect 195, 198 (1983), for the following statistics: (1) In 1978, only 5% of all substantiated reports of abuse or neglect and 24% of all substantiated reports of sexual abuse resulted in criminal prosecution; (2) In 1985, Virginia reported that only 11% of all substantiated reports were referred for prosecution and Iowa reported a rate of 11.3%; (3) In 1984, in Wisconsin, only 7.2% were referred for prosecution.

87. Beeman, *supra* note 34, at 1051.

88. The emergency doctrine has been defined as permitting

> [l]aw enforcement officers [to] enter private premises without either an arrest or search warrant to preserve life or property, to render first aid and assistance, or to conduct a general inquiry into an unsolved crime, provided they have reasonable grounds to believe that there is an urgent need for such assistance and protective action, or to promptly launch a criminal investigation [of circumstances] involving a substantial threat of imminent danger to either life, health, or property, and provided, further, that they do not enter with an accompanying intent to either arrest or search.

Edward G. Mascolo, *The Emergency Doctrine Exception to the Warrant Requirement Under the Fourth Amendment*, 22 Buff. L. Rev. 419, 426-27 (1973).

The exigent circumstances doctrine has been defined as a residual category, not only to the emergency doctrine, but to all other exceptions to the warrant requirement as well.

> "Exigent circumstances" is the Supreme Court's category for events not falling into other specific exceptions, but nonetheless requiring immediate action. This exception allows for a warrantless search or seizure where there is a compelling need for immediate official action and time does not permit the procurement of a warrant. The Court considers the

The exigent circumstances doctrine covers three main areas: risk of imminent destruction of evidence, risk of escape of a suspect, and risk of danger to either life, health, or property. The latter risk is also called the emergency doctrine. Essentially, a searching agent is allowed to conduct a search in the absence of a warrant, since taking time to procure a warrant is likely to result in one of the three aforementioned risks.[89] During the course of such entries and searches, evidence of an incriminating nature may be discovered. The issue then arises whether such evidence will be admissible in a criminal prosecution or a juvenile court proceeding against the person(s) implicated.

The general assumption is that the exigent circumstances and emergency doctrines are exceptions to the warrant requirement only. It would seem the searching officer must still have probable cause to believe evidence will be discovered by the search. The Court has indicated, however, that in emergency circumstances probable cause may not be the appropriate standard to measure the reasonableness of the search.[90] Whether these cases are analogous to a home entry in a child abuse investigation is relevant to Article 613's "reasonable suspicion" standard for procuring the entry order. Clearly the emergency doctrine appropriately applies where a case of true imminent danger to the life or health of a child exists, and the entry order requirement of Article 613 would be excused. In cases short of immediate danger, however, where it is feasible to procure a warrant prior to the search, do the exigent circumstances and emergency doctrines support issuance of an entry order justified by proof less than probable cause?

Article 613 requires the affidavit supporting the entry order to demonstrate "that reasonable suspicion exists that the child has been abused or neglected."[91] As indicated earlier, an entry order is essentially a search warrant. The Fourth Amendment allows warrants issued only upon probable cause. The Supreme Court has never definitively described what makes a factual situation rise to the level of probable cause. The probable cause standard is best understood as being

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facts of each case to determine whether it is a "now or never" situation.

Barbara C. Salken, *Balancing Exigency and Privacy in Warrantless Searches to Prevent Destruction of Evidence: The Need for a Rule*, 39 Hastings L.J. 283, 287 n.20 (1988).

The primary difference seems to be a court is more likely to be inclined to employ less exacting scrutiny in upholding warrantless searches necessitated by a risk of bodily harm or death, than those necessary to prevent the removal or destruction of evidence. Most warrantless entries and searches in the context of child abuse investigations will fall under the umbrella of the emergency doctrine.

89. "Excluding the consent situation . . . every exception to the requirement of a warrant derives from an emergency." Mascolo, *supra* note 88, at 425. *See also* Salken, *supra* note 88, at 287 n.19:

> The development of "specifically established and well-delineated exceptions" like search incident and automobile searches was merely a recognition that certain circumstances presented emergencies so frequently that the Court was willing to accept the presence of an exigency whenever the intrusion occurred in that factual situation without regard to whether there was actually an emergency in the particular case.

90. *See, e.g.*, Minnesota v. Olson, 495 U.S. 91, 110 S. Ct. 1684 (1990).

91. La. Ch. Code art. 613.

a point on a continuum of evidence—more than mere suspicion and less than evidence which would justify conviction.

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.[92]

In the context of the usual emergency exceptions to the warrant requirement,[93] the probable cause standard has been altered. Identifying the new standard is difficult. Supreme Court jurisprudence in this area has been sketchy and indirect.[94] What can be surmised is that, in emergency situations, the former probable cause standard has been altered to a *post facto* test of reasonableness.[95]

The exigent circumstances doctrine dispenses with the warrant requirement in a case where a risk of imminent destruction or removal of evidence exists. In *Vale v. Louisiana*,[96] the Court recognized a warrantless search of a home may be undertaken in "an exceptional situation."[97] However, the Court very narrowly construed the emergency doctrine of risk of evidence loss excluding the evidence at issue because it was neither in the process of being destroyed nor about to be removed from the jurisdiction. In *Schmerber v. California*,[98] by contrast, the Court upheld a warrantless taking of a blood sample where the officer believed delaying the process to procure a warrant would result in the destruction of evidence—the suspect's body would eliminate alcohol from the system. In both cases, the officers had probable cause to search for the evidence; however, only in *Schmerber* did the Court find the officer reasonably believed the delay for a search warrant would result in destruction of the evidence sought.

In *Warden, Maryland Penitentiary v. Hayden*,[99] the Court upheld a warrantless search under the emergency doctrine of eliminating danger to others; an entry by police chasing a robbery suspect seen entering a private home was justified by the need to protect the home's occupants. However, the Court did not address what criteria were necessary to determine the existence of an emergency. This case may be discussed as an exception to the warrant requirement under the "hot pursuit" category of the exigent circumstances doctrine. The criteria that must be met in "hot pursuit" cases, according to *Warden*, is immediate and continuous pursuit of the suspect from the scene of a crime. Officers must show they were in pursuit of

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92. Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983).
93. *See supra* notes 88, 89.
94. Beeman, *supra* note 34, at 1062-67.
95. Terry v. Ohio, 392 U.S. 1, 19-20, 88 S. Ct. 1868, 1878-79 (1968).
96. 399 U.S. 30, 90 S. Ct. 1969 (1970).
97. *Id.* at 34, 90 S. Ct. at 1972.
98. 384 U.S. 757, 86 S. Ct. 1826 (1966).
99. 387 U.S. 294, 87 S. Ct. 1642 (1967).

the suspect, maintained a fairly close proximity to the suspect in the course of the chase, and witnessed the suspect entering the area that is subsequently searched.[100] Under these circumstances, police have probable cause to believe the suspect will be found inside.

In *Minnesota v. Olson*,[101] the most recent statement of the Supreme Court in the area of exigent circumstances, the Court with little discussion essentially adopted the decision of the Minnesota Supreme Court. The Minnesota court observed that "a warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or other persons hiding inside or outside the dwelling."[102] In deciding whether exigent circumstances existed, this court applied the so-called *Dormon* analysis. This analysis considers: (1) whether the offense is a grave offense, particularly a crime of violence; (2) whether the suspect is reasonably believed to be armed; (3) whether the showing of probable cause connecting the defendant to the offense is more than minimal; (4) whether the police have strong reason to believe the suspect is in the premise being entered; (5) whether a likelihood exists that the suspect will escape if not swiftly apprehended; and (6) whether the entry, though not consented to, is made peaceably.[103] In applying this analysis to the circumstances in *Olson*, the Minnesota Supreme Court found exigent circumstances did not exist. The United States Supreme Court, in affirming, stated, "We are not inclined to disagree with this fact-specific application of the *proper legal standard*."[104] This standard might be seen as a fact specific measurement of probable cause, the relevant facts being what the reasonable officer knew and might have believed. However, the evidentiary standard prior to entry is still high—"strong reason to believe that the suspect is in the premise being entered."[105] Thus, in the exigent circumstances test for reasonableness, more than just traditional probable cause is needed to justify the warrantless entry.

In *Mincey v. Arizona*,[106] although the Court refused to hold the search of a homicide scene dispenses with the need for a search warrant, it expressly recognized the existence of the emergency doctrine. The Court stated in dictum:

> We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.[107]

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100. *Id.* at 298-300, 87 S. Ct. at 1645-46.
101. 495 U.S. 91, 110 S. Ct. 1684 (1990).
102. Minnesota v. Olson, 436 N.W.2d 92, 97 (Minn. 1989) (citations omitted).
103. Dormon v. United States, 435 F.2d 385, 392-93 (D.C. Cir. 1970).
104. *Olson*, 495 U.S. at 100, 110 S. Ct. at 1690 (emphasis added).
105. *Dormon*, 435 F.2d at 393.
106. 437 U.S. 385, 98 S. Ct. 2408 (1978).
107. *Id.* at 392, 98 S. Ct. at 2413 (footnotes omitted).

This formula gives little guidance to the level of proof necessary for a warrantless search although the language is compatible with Article 613's "reasonable suspicion" standard.

In the context of child abuse and neglect cases, two subcategories of emergency doctrine cases appear frequently: (1) when officials enter a home to assist young children who have been left unattended,[108] and (2) when a person within the home is reported to be ill or injured, or potentially ill or injured.[109] The latter subcategory is the general factual situation in which most child abuse investigations are likely to arise, and the case for which Article 613 provides. State officials receive reports of alleged child abuse and/or neglect and mobilize their forces from that point according to state guidelines.

The dictum in *Mincey*, quoted above, is helpful to identify the factors that are relevant to whether a warrantless entry is justified in either of the two aforementioned cases. Officers may enter "when they reasonably believe that a person within is in need of immediate aid."[110] The test of the reasonableness of the officer's belief is objective and should take into account the circumstances then confronting the officer, including the necessity to make a quick assessment of often ambiguous information regarding what may be serious consequences. As one commentator has pointed out, the test in *Mincey* permits entry for the protection of children known to be left unattended; "in need of immediate aid" is satisfied because of "the existence of a known and unacceptable risk" to the child, even though such risk may not be particularly imminent.[111] On the other hand, in the case of only a possibility of danger, as with an unverified report of abuse, the question remains, "How is 'reasonably believe' to be construed?"[112]

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108. *See, e.g.*, People v. Sutton, 65 Cal. App. 3d 341, 352 (1977) ("[F]acts . . . indicating that an infant child may be unattended constitute . . . a substantial threat . . . that . . . is not dissipated by the return of a custodial parent in a state of obvious intoxication."). *See also* Dawn O. v. Nutter, 58 Cal. App. 3d 160 (1976). A child coming home from school was locked out of her apartment until 10:00 p.m. Juvenile officer's knocks were unanswered. The officer deduced from a conversation with the child that the child had at least one younger sister. *Id.* at 162-63. The officer's subsequent entry into the apartment and discovery of two infants who had been left alone was upheld as constitutional. *Id.*

For additional cases involving warrantless entries justified by a need to assist unattended young children, see State v. Jones, 608 P.2d 1220 (Or. Ct. App.), *review denied*, 289 Or. 337 (1980); State v. Plant, 461 N.W.2d 253 (Neb. 1990). Sometimes the need to assist unattended children arises out of a lawful arrest of the children's caretaker. *See, e.g.*, State v. Bittner, 359 N.W.2d 121 (S.D. 1984). However, where the children are unattended due to an unlawful arrest of the caretaker, the entry has been held illegal. *See, e.g.*, Nelson v. State, 609 P.2d 717 (Nev. 1980).

109. *See, e.g.*, Wooten v. State, 398 So. 2d 963 (Fla. Dist. Ct. App.), *petition for review dismissed*, 407 So. 2d 1107 (1981); Commonwealth v. Kingsbury, 385 N.E.2d 1020 (Mass. App. Ct.), *aff'd in part*, 393 N.E.2d 391 (1979).

110. Mincey v. Arizona, 437 U.S. 385, 392, 98 S. Ct. 2408, 2413 (1978).

111. Mark Hardin, *Legal Barriers in Child Investigations: State Powers and Individual Rights*, 63 Wash. L. Rev. 493, 511 (1988).

112. *Id.* at 512.

Whether the emergency doctrine requires a showing of probable cause has not yet been answered. Resort to analogous situations where the probable cause standard has been lifted may prove illuminating. One area in which the traditional probable cause requirement has been removed in the name of emergency is the *Terry* "stop and frisk" doctrine.[113] In a legitimate detention situation by a police officer, a pat down for weapons is permissible if the police officer has a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer to believe the suspect is dangerous and may gain immediate control of weapons.[114] The level of suspicion identified in *Terry* was "reasonable suspicion"—the point at which "a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger."[115] This standard is helpful in deciding when the Article 613 entry order should issue—the order should be granted if the affiant can show he has a reasonable belief, based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the worker's belief the child in the premises has been abused or neglected. However, when the only specific and articulable fact available to the affiant is a phone call from an anonymous person who claims a child has been the victim of abuse or neglect, this standard is clearly less helpful.

In the administrative investigatory context, as discussed above, the standard has been made explicit in *Camara v. Municipal Court.*[116] Traditional probable cause is not required in the area of fire, health, and housing code inspections. The Court employed a balancing test to determine the reasonableness, in which the need to search is balanced against the invasion which the search entails.[117] The Court set forth three factors to be considered in this balancing process: (1) whether the practice at issue has a "long history of judicial and public acceptance,"[118] (2) whether the practice is essential to achieve "acceptable results,"[119] and (3) whether the practice involves "a relatively limited invasion of . . . privacy," "limited" meaning "neither personal in nature nor aimed at the discovery of evidence of crime."[120] Employing this balancing test, the Court held a routine safety inspection could be conducted without the usual case-by-case probable cause determination where "reasonable legislative or administrative standards" exist to guide the process and insure against arbitrary selection of those to be searched.[121] Such standards would be reasonable if based upon such

113. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968).
114. *Id.* at 21, 88 S. Ct. at 1880.
115. *Id.* at 27, 88 S. Ct. at 1883.
116. 387 U.S. 523, 87 S. Ct. 1727 (1967).
117. *Id.* at 536-37, 87 S. Ct. at 1735.
118. *Id.* at 537, 87 S. Ct. at 1735.
119. *Id.*
120. *Id.*
121. *Id.* at 538, 87 S. Ct. at 1736.

factors as the passage of time, the nature of the building, and the condition of the entire area.[122]

The *Camara* reasonableness standard applies fairly well to child abuse investigations. The state clearly has a legitimate and compelling interest in the health, safety, and welfare of children. A factor the Court found significant in *Camara* in justifying the housing inspection warrant was housing code violations are, by their nature and location, difficult to detect. Child abuse is also difficult to detect, especially when young, non-verbal children are involved. Factor (1), a long history of judicial and public acceptance, is inapposite to child abuse investigations. Perhaps in the context of welfare visits, home inspections are historically accepted.[123] But other than that, people probably would equate this investigatory visit, where welfare workers and police come to their doors to look for evidence of child abuse, with a criminal investigation. Factor (2), however, that this search is necessary to achieve acceptable results, is applicable in the case of a child abuse investigation, when the quickest and most effective means of ascertaining the truth of the report is to see the child. As to factor (3), the intrusiveness of a child abuse investigation in contrast to a housing inspection, one commentator points out that if the critical factor in measuring the intrusiveness of a home search is the involvement of police and threat of criminal prosecution, then both types of searches stand on fairly equal footing.[124] In contrast, if the actual invasion of privacy is the critical factor, then an argument may be made that a child abuse investigation of the home is more intrusive. Such inspection within the home infringes family autonomy and disrupts the functioning of the family, thereby implicating greater privacy concerns than when one is subject to housing code inspections.

If, as the Court indicates, the invasion is to be found slight or limited simply by whether the search is personal in nature or aimed at the detection of crime, then the applicability of the *Camara* reasonableness test for the home entry in a child abuse investigation is not as satisfactory. While the home entry is not aimed at the detection of crime, the search is personal because not all families are so targeted for such visits. However, the Court may find reasonable legislative and administrative standards to uphold this search since the application to a family court judge for a home entry order protects against unbridled discrimination on the part of the searching agents.

IV. PORTENTS OF THE CONSTITUTIONALITY OF ARTICLE 613

Other jurisdictions have wrestled with the issue of home entries in cases of child abuse investigations and have discovered no easy resolution. Ultimately the question comes down to the reasonableness of the search under the Fourth

122. *Id.*
123. *See* Wyman v. James, 400 U.S. 309, 91 S. Ct. 381 (1971).
124. Hardin, *supra* note 111, at 521.

Amendment jurisprudence. There are different standards for different types of searches, this much is clear from the review of the administrative search and exigent circumstances cases. However, what standards should be used to measure the reasonableness of a search as Article 613 contemplates?

In *E.Z. v. Coler*,[125] the court refused to require a search warrant or a traditional probable cause standard for a limited search of homes by state child protection workers investigating child abuse and neglect reports. The caseworkers were following detailed procedures in a handbook governing child abuse investigations by the state agency. After entry is requested and denied, entry into the home could be made by force by law enforcement officials and caseworkers. The caseworker could also secure a court order if necessary. "Once inside, the worker may observe those areas of the residence 'reasonably related to the allegations of abuse or neglect.'"[126] The court emphasized the statutorily mandated function of the agency in conducting these procedures was the protection of children, as opposed to the detection of any criminal behavior.[127] The court stated, "In sum, when measured against the fourth amendment requirements governing administrative searches, the Court finds the individual searches described by plaintiff's witnesses to be proper. Moreover, . . . the procedures of the DCFS [Department of Children and Family Services] under which these searches were implemented, fall well within the confines of fourth amendment law."[128]

The court reviewed the *Camara* opinion and found the Supreme Court held "the degree of probable cause needed for issuance of warrant to carry out a housing inspection was less than the degree of probable cause needed for a criminal search."[129] But the *Camara* Court was also careful to note that a warrant might not be required in every type of administrative search; instead, the warrant requirement turns on whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. The court in *E.Z.* used administrative standards to measure the searches. First, no unbridled discretion on the part of the searching agents existed, because the reports of abuse that were the basis of the investigation were required to meet certain hotline standards before the home visit could be undertaken.[130] Second, no risk of prosecution existed if entry was refused. Thus, the searches were more similar to those in *Wyman v. James* than in *Camara*; therefore a warrant should not be

125. 603 F. Supp. 1546 (N.D. Ill. 1985), *aff'd sub nom.* Darryl H. v. Coler, 801 F.2d 893 (7th Cir. 1986).

126. *Id.* at 1549.

127. *Id.* at 1554-55. The *E.Z.* court went on to discuss Wyman v. James, 400 U.S. 309, 91 S. Ct. 381 (1971), as standing for the proposition the search did not offend the Fourth Amendment because of the focus—the welfare of the dependent child. Thus, the intrusion was reasonable even without a warrant or probable cause. *E.Z.*, 603 F. Supp. at 1555. Clearly, *Wyman* does not grant such an exception in every case where child welfare is involved.

128. *E.Z.*, 603 F. Supp. at 1553.

129. *Id.* at 1554.

130. *Id.* at 1556.

required.[131] The court states clearly and unequivocally, "[T]his court finds that the imposition of a warrant requirement or a probable cause-search warrant standard upon the DCFS would make it impossible for it to achieve its purpose—protection of the life and health of the dependent child."[132] The court further stated, "The fact that an immediate examination of the child can verify the allegation of abuse and, if abuse is present, take immediate steps to protect the child, differentiates the investigation of child abuse from the investigation of routine criminal matters."[133]

In *State v. Boggess*,[134] the Wisconsin Supreme Court upheld a warrantless search of a home as an exception under the emergency doctrine. The court applied a *Terry*-like analysis to see if the caseworker and police officer had a reasonable belief the children inside the house were in need of immediate aid. The basis of the suspicion was a report by an anonymous caller that the children had been beaten and were injured. The caller also reported that Mr. Boggess had a bad temper.[135] The court concluded any deficiency in the phone report due to the caller's anonymity was overcome by the specific detail contained in the report and the subsequent corroboration by the caseworker of certain details in the phone call.[136]

In Louisiana, the decision is left to the court issuing the entry order as to proof sufficient to trigger the "reasonable suspicion" standard. The analysis may depend on the balancing of the interests involved. The *E.Z.* court explicitly refused to require corroboration of anonymous phone calls, requiring only the Illinois hot-line guidelines to be satisfied.[137] The court clearly valued the protection of the children far more highly than the parents' rights to privacy. The *Boggess* court arguably did not need to balance these two competing interests as carefully, as it found the facts to fit squarely within a well-accepted exception to the warrant and probable cause requirements—the emergency doctrine. As the court found the facts in the case clearly rose to a level of *Terry* reasonable suspicion, the court did not find it necessary to address the competing interests at stake.[138]

These two cases, *E.Z.* and *Boggess*, illustrate the two different approaches used by the lower courts in deciding permissibility of home entries in the context of child abuse investigations—the administrative search approach and the exigent

131. *Id.*

132. *Id.* at 1558.

133. *Id.* at 1559-60.

134. 340 N.W.2d 516 (Wis. 1983).

135. Although this fact alone should not trigger the emergency exception, taken together with the report the children were fairly seriously injured and required medical attention, this apparently was enough for the court to conclude the caseworker was reasonable in the belief the children were in need of immediate aid. *Id.* at 519.

136. *Id.* at 523-24 (citing Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317 (1983)).

137. E.Z. v. Coler, 603 F. Supp. 1546 (N.D. Ill. 1985), *aff'd sub nom.* Darryl H. v. Coler, 801 F.2d 893 (7th Cir. 1986).

138. *Boggess*, 340 N.W.2d at 524-25.

circumstances approach.[139] More frequently these issues arise in the context of a Section 1983[140] action for damages resulting from the alleged violation of the civil rights of parents and children by state officials. The issue in these civil actions is whether the state actor is entitled to qualified immunity from suit; the answer turns on "whether, despite the absence of a case applying established principles to the same facts, reasonable officials in the defendants' position at the relevant time could have believed, in light of what was in the decided case law, that their conduct would be lawful."[141] Thus, the courts must enter into an inquiry of the clearly established law at the time of the home search.

In *Good v. Dauphin County Social Services for Children and Youth*,[142] the court held state officers "should have known what the Constitution required of them."[143] The court further noted:

> The decided case law [makes] it clear that the state may not, consistent with the prohibition of unreasonable searches and seizures found in the Fourth and Fourteenth amendments, conduct a search of a home or strip search of a person's body in the absence of consent, a valid search warrant, or exigent circumstances.[144]

This case involved a warrantless entry conducted in response to a single anonymous report made twenty hours previous to the search stating the child had bruises on her body "of unspecified severity."[145] The court found that, under the clearly established case law of the exigent circumstances doctrine, the officers were unreasonable in believing that their entry was lawful.[146] The court did not discuss the administrative search exception to the warrant requirement, nor did the court address the quantum of proof necessary for such a search to be lawful, seeming to assume traditional probable cause is required for a valid search warrant.

A police officer/defendant in *Franz v. Lytle*[147] also argued he was entitled to summary judgment based on qualified immunity. He contended the court should not distinguish "his conduct as a police officer investigating a report of child neglect or abuse from that of a social worker performing the same function."[148] The court began by stating the defendant's argument required it to decide, "in effect,

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139. For a discussion of the *Boggess* approach, see the cases cited *supra* notes 108-109. For a discussion of the *E.Z.* approach, see the cases cited *infra* notes 141-162 and accompanying text.

140. 42 U.S.C. § 1983 (1988).

141. Good v. Dauphin County Social Servs. for Children and Youth, 891 F.2d 1087, 1092 (3d Cir. 1989).

142. 891 F.2d 1087 (3d Cir. 1989).

143. *Id.* at 1092.

144. *Id.*

145. *Id.* at 1095.

146. *Id.* at 1095-96.

147. 997 F.2d 784 (10th Cir. 1993).

148. *Id.* at 784-85.

whether social workers are relieved of the probable cause or warrant requirement when investigating cases of child abuse or neglect in order to make [the defendant] ultimately the beneficiary of that analysis."[149] The *Franz* court indicated it would have addressed the issue under an administrative search analysis had it reached the point where it was necessary to do so.[150] But despite this promising introduction, the court in fact avoided this issue by accepting and relying upon the trial court's finding that, at the time the conduct complained of occurred, the defendant was conducting a criminal investigation aimed at uncovering incriminating evidence of sexual abuse. Because the search was part of an ongoing criminal investigation, the traditional warrant and probable cause requirements were applicable.[151] Since the case law requiring a traditional search warrant in the context of a criminal investigation was clear, the police officer was not entitled to summary judgment on the issue of qualified immunity.

An Alabama appellate court was also not required to confront this issue squarely in *H.R. v. State Department of Human Resources*,[152] a case where a mother challenged a court order compelling her to comply with an investigation of allegations of child abuse and neglect. After receiving two anonymous reports of child abuse/neglect, a state worker went to the home to investigate and was denied entry. An Alabama statute provides that, when consent to investigate the home or interview the child cannot be obtained, "a court of competent jurisdiction, upon cause shown, shall order the parents or persons in charge of any place where the child may be to allow the interview, examinations, and investigations."[153] The issue was "whether there was sufficient cause shown to permit the department to enter the family's home and interview the children."[154] The court found it unnecessary to decide whether "cause shown" was intended to be traditional probable cause or reasonable cause or some other standard. Instead, the court reasoned

> the power of the courts to permit invasions of the privacy protected by our federal and state constitutions, is not to be exercised except upon a showing of reasonable or probable cause to believe that a crime is being or is about to be committed or a valid regulation is being or is about to be violated.[155]

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149. *Id.* at 788.

150. *Id.*

151. *Id.* In an earlier decision, the same court was able to sidestep the same issue because the entry order obtained was based upon false information. The court stated: "[W]e do not have occasion to decide whether a search of a private home [in the course of a child abuse investigation] without a warrant or probable cause violates the fourth [sic] Amendment." Snell v. Tunnell, 920 F.2d 673, 697 (10th Cir. 1990), *cert. denied sub nom.* Swepston v. Snell, 499 U.S. 976, 111 S. Ct. 1622 (1991).

152. 612 So. 2d 477 (Ala. Civ. App. 1992).

153. *Id.* at 478 (quoting Ala. Code § 26-14-7(c) (1975)).

154. *Id.*

155. *Id.* at 479 (citations omitted).

Under the circumstances of the case, where the reports were "unsworn hearsay" and occurred two months prior to the entry order being sought, there was no "cause shown," as the proof could only, "at best, present a mere suspicion." "A mere suspicion is not sufficient to rise to reasonable or probable cause."[156] Thus, the court did not discuss the ramifications of allowing a search justified by any standard less than probable cause.

In *Parents of Two Minors v. Bristol Division of Juvenile Court Department*,[157] the court easily stated that, without statutory authority, a court is without inherent power to order parents to submit to nonemergency home visits by child protection workers investigating an anonymous report of child abuse. This holding is clearly correct where the investigation is civil in nature, rather than criminal. But, if police investigating the crime of child abuse request a warrant, the warrant may be granted upon the traditional probable cause analysis.

Perhaps the most shocking case in the area of home searches in a child abuse investigation is *New Jersey Division of Youth and Family Services v. Wunnenburg*.[158] In this case, the social workers investigating the alleged child abuse and/or neglect had statutory authority for investigating "all information received concerning the neglect or abuse of any child."[159] The statutory criterion for investigation was whether the child protection division believes the action in the child's best interest is to move forward with an investigation. If parents resist the investigation, then the division could apply for a court order compelling the parents to comply. Again, the standard to be used in determining whether to grant the order is "best interests of the child." The court examined this standard briefly, stating, "Quite obviously the Legislature concluded that where a child's best interests required, the parent's privacy interest yields. We found no authority holding that the Legislature could not so constitutionally provide."[160] Reasoning under the line of Supreme Court jurisprudence allowing administrative searches on a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to the particular establishment, the court found the entry into the Wunnenburg home was conducted according to "reasonable standards."[161] The court reasoned further, "A court's satisfaction that [a child's] best interests would be served by such an intrusion provides the

156. *Id.* (citation omitted).

157. 494 N.E.2d 1306, 1309 (Mass. 1986).

158. 408 A.2d 1345 (N.J. Super. Ct. App. Div. 1979).

159. *Id.* at 1346. The court relied on a New Jersey statute, which at the time provided:

> If the parent, parents, guardian, or person having custody and control of the child shall refuse to permit or shall in any way impede investigation, and the [Division] determines that further investigation is necessary in the best interests of the child, the [Division] may thereupon apply to the Juvenile and Domestic Relations Court of the county where the child resides, for an order directing the parent, . . . to permit immediate investigation. The court, upon such application, may proceed to hear the matter in a summary manner and if satisfied that the best interests of the child so require may issue an order so requested.

160. *Wunnenburg*, 408 A.2d at 1347.

161. *Id.* at 1348.

[parents] with the guarantee that the decision to search 'is justified by a reasonable governmental interest.'"[162]

V. CONCLUSION

The court in *E.Z.* is correct about one thing in particular—meeting any other standard than the criteria contained in the hot-line guidelines would be so difficult as to make the investigation of the reported abuse completely ineffectual. This court's interpretation of a reasonable suspicion standard would require the alleging report of abuse itself to meet certain guidelines before the home entry could be effected. In practice, Louisiana child protection workers employ a test of three criteria before attempting an investigatory home visit.[163] First, the report must allege the child that is the subject of the report is an unemancipated minor (under the age of 18). Second, the report must allege the abuse or neglect was committed by a person who is a caretaker of the child and lives with the child. Third, an allegation must exist of a past or current substantial risk to the child.[164] Louisiana's Child Protection Services has characterized these criteria as an "allegation-driven system."[165] The following hypothetical helps to illustrate the mechanics of this test. A report is made that the sixteen-year-old sibling of a five-year-old child has sexually abused the child. On first glance, this report seems not to warrant a home visit since it does not allege a caretaker of the child is responsible for the abuse. However, the report implies the caretaker, presumably the parent, has exercised a lack of supervision over the five-year-old by allowing the abuse to take place. Therefore, the report does meet the criteria,[166] and a home investigatory visit would be mandatory.

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162. *Id.* (citing Camara v. Municipal Court, 387 U.S. 523, 539, 87 S. Ct. 1727, 1736 (1967)). The amazing thing about this case is that bit of information which so concerned the division about this child's best interests that it commenced an investigation. Twenty-two months before this search was to take place, the Wunnenburgs had been adjudicated for parental unfitness and had their parental rights terminated with respect to three children. Michael, the child whose welfare was at issue in this instance, had been born after this adjudication. Therefore, when the case workers began this investigation, there was no evidence indicating this child had been abused or neglected. There was merely a suspicion on the part of the investigators that because these parents had been adjudicated unfit to be parents of other children in the past they might be abusing or neglecting a different child. *Id.* at 1346. Thus the court held: "In the absence of countervailing evidence, evidence of unfitness 22 months before the entry based upon the facts of unfitness found in that prior adjudication provides a more than sufficient justification for an investigation of the child's circumstances." *Id.* at 1348-49.

163. Telephone interview with Walter Farr, Program Manager, Louisiana Child Protection Services (March 9, 1994).

164. *Id.*

165. *Id.*

166. *Id.* Note if the reporter indicated the parent was seeking professional help for the sixteen-year-old, the report would not meet the criteria because the lack of supervision element has been removed.

These criteria are essentially those found in the *E.Z.* case.[167] As that court accepted, typically the only proof available to the caseworker at the time of applying for the entry order is the report and a subsequent refused entry at the home. Thus, ultimately the magistrate will be deciding whether to grant entry based on the credibility of the report, not on the belief of the affiant that abuse is taking place.

Lower courts have understandably been reluctant to clearly rule on the constitutionality of these searches. Instead they have struggled either to fit each case into a defined exception to the traditional warrant category or to find a reason to make an exception unnecessary. But those courts that have been cornered into ruling on a statutory scheme that permits entry orders based on a quantum of evidence less than probable cause have found the searches valid under the administrative search exception to the warrant requirement. This exception is clearly the most applicable under the circumstances. The reasoning in the administrative search cases also permits courts to consider the competing interests at stake—interests which are heavily weighted against following a traditional probable cause requirement.

In light of the trend of expansion in the category of administrative searches, if the Supreme Court has the opportunity to rule on the constitutionality of a statute such as Louisiana Children's Code article 613, the statutory searches will be upheld as a constitutional balancing of interests because of the clear guidelines and limits on the power of the searching agents, as well as the civil purpose of the search. But the reasonable suspicion standard incorporated in the article must be given limits as well. Thus, the most important job for the Supreme Court in this area is to answer the question: what quantum of evidence is necessary before a valid civil search pursuant to statutory authority will be deemed constitutional? Past jurisprudence indicates the *Terry* reasonable suspicion will meet the standard. But a huge gap exists between articulating specific facts which make a reasonable officer believe he is in danger and receiving an anonymous report merely alleging an instance of neglect and abuse with no corroboration.

A strong argument made by the *E.Z.* court is the hot-line criteria are sufficient, and must be held sufficient, to justify a home entry. The difficulty of investigation requires an exception to the normal rule of analyzing the evidence for veracity. The hot-line criteria impose guidelines sufficient to protect parents

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167. E.Z. v. Coler, 603 F. Supp. 1546, 1549 (N.D. Ill. 1985), listed the Illinois criteria from the Handbook as follows:

(1) a child less than eighteen years old is involved;
(2) the child was either harmed or in danger of harm;
(3) a specific incident of abuse is identified;
(4) a parent, caretaker, sibling or babysitter is the alleged perpetrator of neglect; or
(5) a parent, caretaker, adult family member, adult individual residing in the child's home, parent's paramour, sibling or babysitter is the alleged perpetrator of abuse.

against arbitrary searches. In addition, Louisiana requires a magistrate to review the report for satisfying the criteria. This step is an additional protection against arbitrary enforcement and overzealous child protection workers.

In this difficult area where important interests are in irresolvable conflict, Article 613 imposes a reasonable means of allowing child protection workers to do their jobs—protecting children in danger. This functional statute is constitutional as interpreted under the Supreme Court jurisprudence regarding administrative searches. Although the standard of "reasonable suspicion" has not yet been interpreted in this context, as long as guidelines constraining arbitrariness and unreasonableness of searching agents are in place to protect the families whose homes and lives are invaded, then the Fourth Amendment is satisfied. This is, after all, a civil search.

Laure Ashley Culbertson